

POLITICIANS' PRIVACY

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Abstract: During the preceding four decades, the “private” lives of politicians have been subjected to an increasing degree of public scrutiny; so much so that it might be argued that those pursuing or occupying elected office – especially senior positions (e.g., Cabinet ministers) – are often denied a degree of privacy commensurate with adequately respecting and protecting human dignity. In this essay I argue that, while politicians should not be expected to forsake all hope of privacy, the voluntary character of, and responsibilities attached to, elected political office, coupled with citizens’ democratic right to choose their political representatives freely, renders it ethically legitimate for the “public” and many of the “private” elements of politicians’ lives to receive a degree of public scrutiny that greatly exceeds that experienced by their fellow citizens.

Keywords: *politicians, privacy, democracy, public right to know, public import, human dignity.*

1. INTRODUCTION

The news regularly contains stories about the misbehaviour of public figures – e.g., movie stars, sports personalities, famous musicians, politicians, etc – which, in turn, often generate complaints about the “violation” of said public figures’ privacy. And not infrequently the information revealed proves damaging to the public figure(s) in question. Indeed, the careers of numerous high-profile public figures have been prematurely brought to an abrupt and unceremonious end as a result of public reporting about their “private” behaviour. The appetite and subsequent hunt for such problematic behaviour is perhaps nowhere more zealous and

relentless than in the political realm. The adversarial nature of democratic politics, especially during election periods, generates a largely unparalleled lust for “dirt” (i.e., potentially harmful information) related to the professional and personal lives of one’s competitors. Unsurprisingly, in such an environment the question of the proper scope of one’s “right” to privacy becomes a matter of ongoing debate.

Below, I consider the legitimacy of the proposition that politicians in representative democracies¹ *should expect* to have significantly less privacy than their fellow citizens. I begin by offering a brief description of the concept and value of *privacy*. After having done so, I examine the idea of “the public’s right to know” and its relationship to representative democracy and the degree of privacy afforded to politicians. I also reflect upon the notions of *relevance* and *public import* and their potential significance in terms of demarcating the legitimate scope of the public’s right to know about the “private” lives of politicians.

Within the context of the aforementioned examination, I offer a number of reasons for believing it legitimate for the “public” and many of the “private” elements of politicians’ lives to receive a degree of public scrutiny that notably exceeds that experienced by their fellow citizens. In particular, I argue that the proposed greater degree of scrutiny is justified by the voluntary and public character of both the occupation (i.e., politician) and the responsibilities associated with it,² and necessitated by the demands of representative democracy. I also suggest that, while politicians should not be expected to forsake all hope of privacy, adequately satisfying citizens’ legitimate right to information generates enormous difficulties for any effort seeking to establish clear, fixed parameters for the public’s right to know that exclude anything other than the most mundane personal information. I then briefly consider the potential to develop a viable approach to identifying parameters for the public’s right to know that protect anything more than the most mundane aspects of a person’s life, and the likely impact of a failure to do so. I conclude by briefly summarizing the principal observations presented in the essay.

¹ Henceforth, all references to “politicians” should be understood as denoting politicians in contemporary representative democracies.

² To be clear, the responsibilities in question are “voluntary” in the sense that they are assumed voluntarily insofar as one must voluntarily seek elected political office.

2. THE CONCEPT AND VALUE OF PRIVACY

"Privacy" is an *essentially contested concept* – i.e., a concept the "proper use of which inevitably involves endless disputes about ... [its] proper ... [use] on the part of ... [its] users".³ Unsurprisingly, then, there currently exists no universally accepted single definition of "privacy".⁴ However, in order to complete the analysis that is the focus of this essay, a definition must be adopted. Accordingly, for the purposes of this essay, "privacy" should be understood as concerning the capacity of individuals "to determine for themselves when, how, and to what extent information about them is communicated to others".⁵ In other words, privacy concerns one's ability to keep information about herself/himself confidential unless s/he chooses to do otherwise.

Precisely what constitutes a voluntary forsaking of confidentiality raises consideration of *express* versus *tacit* consent – i.e., whether one explicitly waives one's right to privacy (i.e., express consent) or can be argued to have done so as a consequence of one's actions (i.e., tacit consent). For example, any individual that divulges information in an

³ W. Gallie, *Essentially Contested Concepts*, Proceedings of the Aristotelian Society 56 (1956), p.169. Robert C. Post has offered the following lament: "Privacy is a value so complex, so entangled in competing and contradictory dimensions, so engorged with various and distinct meanings, that I sometimes despair whether it can be usefully addressed at all". See R. Post, *Three Concepts of Privacy*, Georgetown Law Journal 89 (2001), p. 2087.

⁴ For example, see Institute of Medicine, *The Value and Importance of Health Information Privacy*, [in:] Beyond the HIPAA Privacy Rule: Enhancing Privacy, Improving Health through Research, eds. S. Nass, L. Levit, and L. Gostin, Washington, DC, The National Academies Press 2009, p. 76; S. Wong, *The Concept, Value and Right of Privacy*, UCL Jurisprudence Review 3 (1996), p. 166; R. Gellman, *Does Privacy Law Work?*, [in:] Technology and Privacy: The New Landscape, eds. P. Agre and M. Rotenberg, Cambridge, MA, MIT Press 1997, p. 194; W. Peekhaus, *Personal Health Information in Canada: Clearing the Conceptual Underbrush and Accounting for Public Opinion*, Proceedings of the Annual Conference of the Canadian Association for Information Science (2006), p. 5; and F. Schauer, *Can Public Figures Have Private Lives?*, Social Philosophy and Policy 17 (2000), p. 294.

⁵ A. Westin, *Privacy and Freedom*, New York, Atheneum Publishers 1967, p. 7; also see, for example, J. P. Dobel, *Judging the Private Lives of Public Officials*, Administration & Society 30 (1998), p. 116; and R. Gavison, *Privacy and the Limits of Law*, Yale Law Journal 89 (1980), pp. 428-429. It should be noted that Westin referred not only to *individuals*, but also to "groups" and "institutions" (see Westin, op. cit., p. 7).

environment in which those present cannot reasonably expect that no observation or recording may occur without their knowledge⁶ – such as in public parks, coffee shops, at “town hall” meetings, and so on⁷ – might be understood to have *tacitly* consented to forsaking one’s privacy in that instance. Unsurprisingly, there remains significant debate about the legitimacy of applying the concept of tacit consent to matters of privacy.

The debate about such issues is merely one indication of the importance attached to the protection of privacy. What is the basis for that importance? Put differently, what is valuable about privacy? Akin to the situation with respect to defining “privacy”, there are numerous suggestions as to why privacy is valuable,⁸ including that it is necessary for autonomy, self-development, individual liberty, dignity, respect, establishing meaningful relationships, and realising a properly functioning democracy.⁹ More generally, privacy is often identified as an essential element of the “human condition”¹⁰ – i.e., a fundamental feature of what being *human* means: adequately respecting human dignity requires acknowledging and (reasonably) accommodating individuals’ privacy.¹¹

⁶ N. Whiteman, *Undoing Ethics: Rethinking Practice in Online Research*, New York, Springer 2012, p. 55.

⁷ It might be argued that public parks and coffee shops (and other similar venues) are thought of as offering a certain (perhaps noteworthy) degree of privacy. However, the point is not that people *believe* that such venues offer no possible privacy, only that they are venues in which those present cannot *reasonably* expect that “no observation or recording” may occur without their knowledge – i.e., there is typically no assurance that such observation or recording will not occur. I thank Kevin Macnish for identifying the need for this clarification.

⁸ I will not examine herein the question of whether privacy’s value is properly understood as *intrinsic* or *instrumental*, *derivative* or *fundamental*, or some combination thereof.

⁹ For example, see Gavison, op. cit.; D. Solove, *Understanding Privacy*, London, Harvard University Press 2009, pp. 78-100; R. Wasserstrom, *Privacy: Some Arguments and Assumptions*, [in:] *Philosophical Dimensions of Privacy: An Anthology*, ed. F. Schoeman, Cambridge, Cambridge University Press 1984, pp. 317-332; and Wong, op. cit.

¹⁰ For example, D. Miller, *Do Politicians and Other Public Figures Have (Moral) Privacy Rights which can be Asserted against the Media?*, UCL Jurisprudence Review 3 (1996), pp. 152, 157; Post, op. cit.; Wong, op. cit.; Dobel, op. cit.; and C. Fried, *Privacy*, Yale Law Journal 77 (1968), pp. 475-493.

¹¹ For example, Miller, op. cit., pp. 152, 157; Post, op. cit.; Dobel, op. cit.; and Fried, op. cit.

Regardless of the precise reasons people offer to explain why they value privacy, most individuals believe not only that privacy is valuable, but also that they have a significant “right”¹² to it.¹³ Consequently, “invasions” of privacy are usually considered a violation of one’s rights (moral and/or legal). However, the right to privacy can and does conflict with other rights; and as privacy is not (typically) considered an *absolute* right¹⁴ – either in a moral or a legal sense – it is generally accepted that there are instances in which its violation might reasonably be considered acceptable insofar as said violation serves the realisation of an objective that is understood to be of greater value/importance in the circumstances in question than is the protection of privacy (e.g., national security).

3. POLITICIANS' PRIVACY AND “THE PUBLIC’S RIGHT TO KNOW”

If one accepts privacy as being a constitutive element of what it means to be human, then, by definition, all humans are equally deserving of a *prima facie* protection of their privacy. However, there are a number of reasons for believing it acceptable for politicians to receive less privacy than that accorded to their fellow citizens. In particular, such a conclusion is supported by the following facts: 1) politicians pursue elected office and, in turn, enter the public realm *voluntarily*; 2) the public nature/impact of the responsibilities possessed by elected politicians justifies their behaviour being subjected to a greater degree of scrutiny than that experienced by non-politicians; 3) the means by which politicians secure

¹² For the sake of argument, it will be assumed that privacy can legitimately be understood as a “right” as opposed to merely an “interest”. It has been presented as an important right in the United Nations’ Universal Declaration of Human Rights (1948; Article 12) and in the European Convention on Human Rights (1950; Article 8), for example. For a sample of the debate concerning the legitimacy of characterising privacy as a “right”, please see G. Negley, *Philosophical Views on the Value of Privacy*, Law and Contemporary Problems 31 (1966), pp. 320-323; A. Rosenberg, *Privacy as a Matter of Taste and Right*, Social Philosophy and Policy 17 (2000), pp 68-90; and F. Davis, *What do we mean by “Right to Privacy”?*, South Dakota Law Review 4 (1959), pp. 1-24.

¹³ For example, Wong, op. cit., pp. 165-166; and Institute of Medicine, op. cit., p. 78.

¹⁴ In essence, an *absolute* right is one that cannot be legitimately overridden.

elected office and acquire the aforementioned responsibilities render them accountable to (at minimum) the electorate in a way that is not true of their unelected fellow citizens; and 4) the greater degree of scrutiny imposed upon politicians generates additional information that helps enable citizens to make *informed* decisions about the suitability/desirability of a candidate for elected office, which is pivotal to realizing citizens' right to choose their elected representatives freely – an essential element of the idea of representative democracy.

Importantly, politicians *freely* enter the “public” realm and, in so doing, knowingly expose themselves to a degree of scrutiny (by the media, in particular) that can be expected to notably exceed that experienced by non-public figures.¹⁵ The occupation of “politician” is necessarily “public” in nature and involves *using* the public realm to further specific ends, such as getting (re)elected and/or advancing a particular political or policy agenda or initiative. In entering and using the public realm, politicians motivate and precipitate a degree of attention with respect to their professional *and* personal qualities and activities that exceeds that generated by “regular” members of the polity. Additionally, the nature of politicians' employment and responsibilities provides an extremely powerful argument in favour of their being subjected to a degree of public scrutiny greater than that experienced by their fellow citizens (including non-political public figures). Those elected to political office are involved in making decisions that in very significant ways affect the character and quality of the lives of all members of the polity (i.e., public policy and governmental program decisions). Politicians are placed in such a position and, by extension, vested with such power via public elections. That fact renders politicians *accountable* to the electorate (and, one might argue, to all *citizens* of the polity) for their behaviour while in office; and that accountability generates a “public right to know” about the behaviour and character of politicians – a right that is not equally applicable to non-politicians.

¹⁵ For example, see L. Sun, *Draw a Line between Freedom of Speech and Privacy of Public Figures*, Humanity (2013), p. 41; J. Nordhaus, *Celebrities' Rights to Privacy: How Far Should the Paparazzi be Allowed to Go?*, The Review of Litigation 18 (1999), p. 289; Miller, op. cit., p. 157; D. Flint, *Public Figures and the Press*, Policy 11 (1995), p. 9; and J. Skell Wright, *Defamation, Privacy, and the Public's Right to Know: A National Problem and a New Approach*, Texas Law Review 46 (1968), p. 637.

Relatedly, in a representative democracy that deserves the name,¹⁶ citizens must have the right to *freely* choose their political representatives; in order to exercise that right to the greatest degree possible, citizens must be able to develop *informed* determinations¹⁷ as to politicians' suitability for occupying elected political office.¹⁸ Arguably, developing such determinations requires access to a variety of "professional" and "personal" information about the candidates in question. But precisely what information does that requirement encompass?

4. RELEVANCE AND PUBLIC IMPORT

It seems relatively uncontroversial to suggest that the public's right to know with respect to politicians' "private" lives should encompass information that can reasonably be understood to in some manner reveal or otherwise indicate politicians' ability – potential or realised – to satisfactorily fulfill the responsibilities associated with the elected office they occupy or are seeking to secure.¹⁹ Thus, the type of information that the public has a legitimate claim to access is that which is *relevant* to assessing the individual's capacity to perform the functions of her/his position effectively;²⁰ it is information that is needed to enable citizens to offer informed determinations about who is best suited to be given responsibility for making decisions that will impact the character and quality of life

¹⁶ The qualification "that deserves the name" has been included in order to acknowledge that there have existed many self-proclaimed "representative democracies" that are *representative* and/or *democratic* in little (if anything) more than name or self-serving attribution. For a useful (brief) commentary on the (mis)application of the label "democratic", see M. Warren, *What can Democratic Participation Mean Today?*, *Political Theory* 30:5 (2002), pp. 677-678.

¹⁷ In turn, developing informed determinations about suitability for office can be understood to be necessary to enabling citizens to offer (a type of) *informed consent* to have the individual occupy the office in question.

¹⁸ Henceforth, all references to "elected office" should be understood as referring to elected *political* office.

¹⁹ See, for example, Schauer, *op. cit.*, p. 297.

²⁰ For example, Dobel, *op. cit.*, p. 119; R. Wacks, *Personal Information: Privacy and the Law*, Oxford, Clarendon Press 1993, pp. 14-15; Miller, *op. cit.*, pp. 162-163; and J. Lichtenberg, *The Politics of Character and the Character of Journalism*, Discussion Paper D-2. Presented at the Joan Shorenstein Barone Center, John F Kennedy School of Government, Harvard University (1989).

within the polity. Such information is of *public import* – i.e., it concerns matters that are of importance to the polity as a whole, as opposed to being merely a source of general curiosity to various citizens (e.g., whether a particular politician has a tattoo or listens to a particular musical artist).

J. Patrick Dobel has concluded that the nature of the responsibilities attached to elected office suggests that politicians should (ideally) be “honest, accountable, and competent, possess integrity and self-discipline to keep promises and resist temptations, ... [be] able to exercise judgment under complex and difficult circumstances, and have the imagination and skill to exercise the symbolic dimensions of the office”.²¹ Consequently, according to the argument from relevance, any and all information that relates to determining the degree to which a politician possesses and exhibits the aforementioned qualities is of public import and, in turn, within the scope of the public’s right to know. However, even if one accepts the preceding argument, the question of *specifically* what information is needed to enable citizens to make the necessary determinations remains. History has amply demonstrated that it can be extremely challenging to assess with any significant degree of certainty the precise extent to which someone possesses the qualities deemed important to effectively fulfilling the responsibilities associated with elected office.²²

The information voluntarily provided by politicians and the political parties with which they are affiliated is often relatively innocuous and predictable. There will certainly be no indication that a candidate for political office possesses any qualities or has engaged in any behaviour that is likely to raise questions about her/his suitability to occupy said office; indeed, candidates will be presented as being ideally suited for the office they occupy or for which they are campaigning. And the reliability of the information provided by candidates is often uncertain or otherwise questionable – there are numerous documented instances in which information about candidates has been knowingly exaggerated or is completely false. The challenge of securing valid, useful information can be particularly acute with respect to those who have yet to occupy an elected office – a phenomenon witnessed, for example, with respect to Donald Trump’s 2016 candidacy for the presidency of the United States. How does one judge with any noteworthy degree of confidence the abil-

²¹ Dobel, op. cit., p. 122.

²² Ibidem.

ity of another to fulfill the responsibilities of elected office when the person being judged has not previously occupied such an office or a comparable position? Moreover, even when one has occupied elected office or a position of some comparability, that person's publicly documented past performance may offer little insight with respect to assessing the degree to which s/he possesses and exhibits the desired qualities and/or is likely to do so in the future.²³ Alternatively, even if the public record suggests someone has fulfilled her/his job-related responsibilities flawlessly, that person's "private" behaviour may "raise reasonable doubts about future performance on the job".²⁴

As a consequence of the aforementioned issues and concerns, it does not seem unreasonable to suggest that citizens might legitimately need to explore aspects of a politician's private life in order to secure the information necessary to render a satisfactorily informed decision about said politician's suitability for elected office. But, even if one accepts that conclusion, determinations regarding precisely what constitutes "relevant" information are often subjective and diverge notably.²⁵ For example, while citizens who strictly adhere to the idea of a clear separation between church and state may consider information about a politician's religious practices (or lack thereof) to have no legitimate bearing on her/his ability to satisfy the demands of elected office competently, others may deem the same information to be critical to any effort to determine suitability for elected office insofar as the politician's affirmation of a particular or no religious faith might be considered an indication of that politician's (in)ability to understand and, consequently, effectively represent the interests of the citizens in question. Moreover, if one believes, as do many, that *the personal is the political*,²⁶ then there is seemingly little information that could not be understood as being relevant to citizens' decision-making exercises. Given such subjectivity and potential disagreement, the task of demarcating a meaningful and widely acceptable boundary between 1) information that is relevant/of public import, and 2) purely "private" information might seem rather hopeless.

²³ Dobel, op. cit., pp. 123, 133.

²⁴ See, for example, D. Thompson, *Political Ethics and Public Office*, Cambridge, MA, Harvard University Press 1987, p. 141.

²⁵ See, for example, Miller, op. cit.

²⁶ For example, S. Thomas, *The Personal is the Political: Antecedents of Gendered Choices of Elected Representatives*, Sex Roles 47 (2002), pp. 343-353.

5. IS THERE A VIABLE OPTION?

Frederick Schauer has suggested that it is possible to distinguish between “*morally permissible* and *morally impermissible* tastes” with respect to information relevant to assessing a politician’s capacity to fulfill the duties of her/his elected office.²⁷ According to Schauer, “This distinction is designed to capture the difference between those criteria with which we disagree but that we believe people may legitimately employ, and those criteria that we believe may not be legitimately employed by anyone”.²⁸ Schauer offers marital fidelity as a potential example of the former, and sexual orientation, ethnicity and gender as possible examples of the latter. He suggests that a consequence of this approach is that information that some believe relevant to determinations of suitability will, nevertheless, be considered beyond the scope of the public’s right to know.²⁹ However, having said that, Schauer eventually concludes that determinations of what constitutes relevant information will inevitably and *legitimately* be “based on a voter’s *own* conception of the morally permissible criteria that are material to an office”.³⁰ Hence, his proposed distinction does not necessarily seem to notably impact the potential scope of the information that citizens can claim is “relevant” or important to their decision-making.

One might instead suggest that the public’s right to know should be limited to information that concerns qualities or activities that have had or might have a detrimental impact on the effective governance of the society and the maintenance of a reasonably just democratic polity – i.e., information concerning *public harms*.³¹ For example, if a Minister responsible for matters of national security and defence frequently engaged

²⁷ Schauer, op. cit., p. 303 (emphasis added).

²⁸ Ibidem.

²⁹ Ibidem.

³⁰ Schauer, op. cit., pp. 307-308 (emphasis added).

³¹ Such a proposal adopts an understanding of privacy that draws upon John Stuart Mill’s use of the “harm principle” to distinguish between the “self-regarding” (i.e., private) and the “other-regarding” (i.e., public) spheres. Essentially, Mill argued that behaviour should be considered self-regarding/private unless it will cause harm to others (see, for example, J.S. Mill, *On Liberty and Other Essays*, edited by John Gray, New York, Oxford University Press, 1998, pp. 83-102). However, to be clear, the approach to privacy employed in this essay is not founded upon a comprehensive embrace of Mill’s distinction between the self-regarding and other-regarding spheres. I want to thank one of the anonymous reviewers for suggesting that I comment on this matter.

in behaviour that rendered her/him vulnerable to extortion (e.g., regularly became involved in extra-marital affairs, frequently hired prostitutes, etc), even if the problematic activities occurred “outside” of work, that information could legitimately be considered as being within the public’s right to know.

However, with respect to both what constitutes a public harm and distinguishing between “morally permissible” and “morally impermissible” evaluation criteria, noteworthy disagreement among citizens seems inevitable. As John Rawls,³² among others,³³ has noted, contemporary liberal democracies (CLDs) are characterised by the “fact” of *reasonable pluralism*. Rawls differentiates between reasonable pluralism and the more familiar understanding of pluralism, which he refers to as *simple pluralism*.³⁴ The important distinction between the two is as follows: whereas simple pluralism allows for the existence of any number of conceptions of the good that affirm the belief that it is acceptable to use coercive state power to enforce adherence to their dictates (or, alternatively, to suppress others’ views), the overwhelming majority of conceptions of the good that populate an environment characterised by reasonable pluralism consider it unreasonable and, hence, unacceptable to use state power in such a manner. All *reasonable* conceptions of the good allow for the continued presence of views with which they disagree – i.e., they accept the unavoidability of value pluralism and do not support the use of state power to secure the public primacy of, or obedience to, a particular conception of the good. And, importantly, reasonable conceptions of the good recognise that reasonable pluralism “is not a mere historical condition that may soon pass away; [rather,] it is a permanent feature of the public culture of [CLDs]”.³⁵

Reasonable pluralism is a consequence of “the exercise of human reason within the framework of the free institutions of a [CLD]”,³⁶ which, in turn, results in *reasonable disagreement* – i.e., a difference of opinion

³² J. Rawls, *Political Liberalism*, paperback edition, New York, Columbia University Press 1996, pp. xvii-xix.

³³ See, for example, C. Larmore, *The Morals of Modernity*, New York, Cambridge University Press 1996; and G. Klosko, *Reasonable Rejection and Neutrality of Justification*, [in:] *Perfectionism and Neutrality: Essays in Liberal Theory*, eds. Steven Wall and George Klosko, Lanham, Rowman and Littlefield 2003, pp. 167-189.

³⁴ For example, Rawls, op. cit., pp. 36, 164.

³⁵ Rawls, op. cit., p. 36.

³⁶ Rawls, op. cit., p. xviii; also see, for example, p. 4.

between reasonable people as to the character and precise content of the “good” life. Reasonable people can be understood as individuals who “seek a social world in which they, as free and equal, can cooperate with others on terms all can accept”;³⁷ “they treat their fellow citizens in a ‘reasonable’ manner, which necessitates that they recognise them as free and equal agents, and ‘take into account the consequences of their actions on others’ well-being’ (Rawls, 1996:49n1)”.³⁸ Reasonable disagreement among reasonable people is “not the result of self-interest, nor the result of prejudice, nor irrationality (although disagreement can obviously be caused by these factors as well). The disagreement is reasonable in the sense that it exists as a result of the sincere and reasonable efforts of rational people to consider ethical, religious, and philosophical questions”.³⁹ Like reasonable pluralism, reasonable disagreement is an unavoidable and ineliminable feature of life in CLDs.⁴⁰ But, when such disagreement arises, who decides which party is “correct” or has the more persuasive case, and/or who determines the procedures that will be employed to make such decisions?

An initial inclination might be to suggest that such matters be determined via “majority rule”; which is to say, the public’s right to know should encompass whatever information the majority of the citizenry believes to be relevant to assessing the capacity of politicians to fulfill their responsibilities effectively. However, aside from the practical challenge associated with determining with acceptable accuracy the opinion of the majority of the citizenry and ensuring that the understanding being employed always reflects current opinion, it could be argued that, in denying certain individuals (i.e., those in the “minority”) the right to determine for themselves what information is relevant to their decision-making, such an approach denies those individuals the opportunity to render a

³⁷ Rawls, op. cit., p. 50; also see, for example, J. Rawls, *Justice as Fairness: A Restatement*, ed. E. Kelly, Cambridge, MA, Belknap Press 2001, pp. 6–7.

³⁸ S. Young, *The (Un)Reasonableness of Rawlsian Rationality*, South African Journal of Philosophy 24 (2005), pp. 309.

³⁹ J. Quong, *Liberalism without Perfection*, Oxford, Oxford University Press 2010, p. 37.

⁴⁰ C. Larmore, *Political Liberalism*, Political Theory 18 (1990), p. 340; also see, for example, Larmore, *The Morals of Modernity*, pp. 12, 122; and Rawls, *Political Liberalism*, p. 55. As Isaiah Berlin observed, such diversity and conflict is “an intrinsic, irremovable element in human life” (I. Berlin, *Four Essays on Liberty*, Oxford, Oxford University Press 1969, p. 167).

freely developed decision about a critically important aspect of their lives; such a denial surely undermines a fundamental principle of representative democracy.⁴¹

The end result of the above-noted considerations seems to be that any proposed parameters for the public's "right to know" are likely to encounter what any number of citizens will consider to be *reasonable* opposition – i.e., opposition premised upon arguments that no (reasonable) person could reasonably reject as inapplicable or unimportant.⁴² However, if privacy is an essential feature of what it means to be human, then (theoretically, at least) politicians require some degree of privacy if their humanity is to be adequately respected. While it seems unlikely that anyone would deny politicians the right to some privacy, the argument presented in the preceding paragraphs brings into doubt whether politicians should expect to be afforded privacy for anything other than the most mundane personal matters, such as using the washroom or taking a bath/shower; and such a situation generates consequences that citizens should consider.

6. SOME POSSIBLE CONSEQUENCES OF A BROAD INTERPRETATION OF THE PUBLIC'S RIGHT TO KNOW

While there are legitimate reasons for arguing that politicians should expect to be granted notably less privacy than their fellow citizens, it should also be recognised that such a situation is likely to generate certain undesirable consequences. In particular, it does not seem unreasonable to suspect that the degree of scrutiny to which many politicians are now subjected is likely to dissuade any number of extremely well-qualified and well-intentioned individuals from pursuing elected office. The media's increasing focus on uncovering salacious private behaviour by politicians and sensationalising the slightest personal misstep⁴³ has not only destroyed many political careers, regardless of how well the individuals in question

⁴¹ See, for example, Schauer, *op. cit.*

⁴² For relevant discussions please see Rawls, *op. cit.*, and T. Scanlon, *What We Owe to Each Other*, Cambridge, MA, Harvard University Press 1998.

⁴³ That focus has also seemingly been embraced to a noteworthy degree by politicians and political parties (see, for example, Dobel, *op. cit.*, p. 116).

have (or may have) performed their official duties;⁴⁴ it has also meant that important policy matters and significant public initiatives have received less media attention than is warranted/desirable.⁴⁵ Arguably, there is no compelling reason to believe that the “scandal genie” will or can be “put back in the bottle”. Additionally, ongoing advances in information and communications technologies will only continue to make it increasingly difficult to maintain privacy. Hence, supporting the broadest possible interpretation of the public’s right to know in the name of realising democracy to the greatest degree has the ironic and paradoxical effect of potentially reducing the number of citizens who seek to exercise their democratic right to pursue and hold elected office (to say nothing of how that consequence might negatively impact the polity’s potential achievements and well-being), thereby undermining the realisation of a fundamental element of democracy.

7. CONCLUSION

During the preceding four decades, the “private” lives of politicians have been subjected to an increasing degree of public scrutiny;⁴⁶ so much so that it might be argued that those pursuing or occupying elected office – particularly senior positions (e.g., Cabinet ministers) – have very little privacy. But is such a situation ethically acceptable if privacy is a constitutive element of what it means to be human, and, in turn, all humans (*qua* humans) are equally deserving of privacy? I have argued herein that the voluntary character of, and responsibilities attached to, elected office, coupled with citizens’ right to choose their political representatives freely, produce a situation in which it is legitimate that the privacy afforded to politicians be notably less than that afforded to their fellow citizens.

Politicians – those in office and those seeking to be elected – voluntarily enter the public realm and, in so doing, knowingly expose themselves

⁴⁴ Dobel, *op. cit.*, p. 115.

⁴⁵ See, for example, J. Hunter, *Culture Wars: The Struggle to Define America*, New York, Basic Books 1991.

⁴⁶ See, for example, Dobel, *op. cit.*, p. 126; A. Barker, *The Upturned Stone: Political Scandals and Their Investigation Processes in Twenty Democracies*, Crime, Law and Social Change 21 (1994), pp. 337-373; and Larry Sabato, *Feeding Frenzy: How Attack Journalism has Transformed American Politics*, New York, Macmillan 1991.

to a greater degree of public scrutiny than is typically experienced by their fellow citizens. And given the reality of the past (at least) 40 years, it cannot plausibly be claimed by any contemporary politician that s/he was unaware of the increased public scrutiny that accompanies the pursuit and occupation of elected office. Perhaps even more significant, elected officials are bestowed with the unique authority to establish public policies and programs,⁴⁷ creations that impact all members of the polity. That fact generates a legitimate claim by members of the electorate to have access to as much information as is necessary to assess the “fitness” of candidates for, and occupants of, elected office – and, in particular, the wisdom of allowing them to possess and exercise the associated authority. Concomitantly, the capacity to render such an assessment is an essential contribution to citizens’ ability to freely select their political representatives inasmuch as access to all “relevant” information about those seeking/occupying elected office is necessary to enable a genuinely informed and, by extension, *unconstrained* choice, a foundational element of representative democracy.

The question becomes: what type of information is needed to render such assessments effectively? I have herein suggested that elements of politicians’ public *and* private lives constitute relevant information and, in turn, I have identified some possible ways to delineate “relevant” from “irrelevant” information within those spheres. However, I have also concluded that, given the ineliminable presence of a diversity of competing and, at times, conflicting and irreconcilable reasonable beliefs and values and the resulting reasonable disagreement, there is an immense (if not insurmountable) challenge associated with protecting politicians’ privacy concerning anything other than the most mundane personal matters; and the potential consequences of that situation – in particular, an unwillingness by any number of qualified individuals to pursue elected office – should give some pause for thought to those who are generally inclined to allow politicians’ privacy to be trumped by the public’s right to know.

Nevertheless, arguably, the potential consequences of assigning primacy to “the public’s right to know” are “the lesser of two evils”. As

⁴⁷ Though there are certainly non-politicians involved in the development of public policies and programs, in a representative democracy it is only the elected members of government who can legally establish public policy and public (i.e., legally-mandated) programs.

noted, an animating feature of contemporary representative democracy is the right of citizens to determine by and for themselves who will represent them in government. The ability of citizens to accurately identify those that will best represent their beliefs, values and interests directly corresponds to the amount of professional *and* personal information that citizens can acquire about the candidates vying for those positions. Consequently, the ideal of representative democracy is most fully realized when citizens have access to the greatest amount of (valid) information about those who wish to represent them in government and, in turn, are best able to make informed decisions about the “quality” and subsequent suitability of those candidates.⁴⁸

While it is regrettable that some eminently qualified and extremely well-intentioned individuals might be dissuaded from pursuing elected office because they do not wish to subject themselves – and their family, their friends, etc. – to the type of hyper-scrutiny identified herein, such a situation does not undermine the opportunity for citizens to make informed decisions about who will best serve their interests in government. Of course, there is no guarantee that citizens will either seek out or consume all available relevant information and, by extension, render truly “informed” decisions – indeed, there is a large volume of scholarship that suggests that a significant proportion of many electorates does not make decisions that would reasonably be considered “informed” in the sense of being based upon a good understanding and reasoned assessment of available relevant information⁴⁹ (even within the context of the constraints of bounded rationality⁵⁰). However, what is critical is not that it is guaranteed that citizens engage in such informed decision-making, but that they be provided the opportunity to do so.⁵¹ It is impossible to ensure that citizens make only informed decisions

⁴⁸ See, for example, I. Somin, *Voter Ignorance and the Democratic Ideal*, Critical Review 12 (1998), p. 413.

⁴⁹ See, for example, I. Somin, *Democracy and Political Ignorance: Why Smaller Government Is Smarter*, 2nd edition, Stanford, Stanford University Press 2016; and Somin, *op. cit.*

⁵⁰ As used herein, “bounded rationality” refers to the cognitive and temporal limitations that constrain an individual’s opportunity to process all available information. See, for example, B. Lipman, *Information Processing and Bounded Rationality: A Survey*, Canadian Journal of Economics 28 (1995), pp. 42-67.

⁵¹ Of course, even if the proposed information is accessible, it will remain a daunting task to try to determine with certainty an individual’s true moral character. However, it does not seem unreasonable to suggest that the availability of such information can serve to enhance the potential accuracy of such determinations. I want to thank

when choosing which candidate will receive their vote; but it is possible to make available the information that establishes an environment in which citizens can render such decisions, and, in so doing, help to realize a fundamental element of the idea of representative democracy.⁵²

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